

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. T-04/08-164  
 )  
 Appeal of )

# INTRODUCTION

The petitioner appeals the decision by the Office of Vermont Health Access (HEAU) reducing the number of sessions of in-home occupational therapy (OT) for her daughter, J.R. The issue is whether HEAU's decision is supported by a preponderance of evidence.

## FINDINGS OF FACT

1. J.R. is a seven-year-old girl who has been diagnosed with autism. She has been receiving OT services since November 2005.

2. J.R.'s OT services are delivered by a certified Occupational Therapist in the petitioner's home. The therapist began services for J.R. in November 2005 at her regular prescribed rate of twenty visits every four months. Under Department regulations and policy, the first four months of OT services are not subject to prior approval, and Medicaid covered these services.

3. Based on information provided by the therapist the

Department continued to approve OT services for J.R. at a rate of twenty visits for each of the next two four-month periods (through November 7, 2006).

4. For the four-month period beginning November 8, 2006, the Department granted approval for eighteen visits instead of the requested twenty. The Department based its decision on its prevailing "consultative model" that professional OT services should begin to be tapered down after a year in the expectation that more long-term benefit and continuity is achieved as family members become trained and proficient in providing the services themselves, and school-based services are also established. The petitioner did not appeal this decision.

5. For the four-month period beginning March 8, 2007, the Department granted approval for sixteen visits instead of the requested twenty. The Department again based its decision on the rationale that professional OT services should continue to be tapered down in the expectation that more long-term benefit and continuity is achieved as family members become trained and proficient in providing the services themselves, and school-based services are also

established and coordinated with in-home services. The petitioner did not appeal this decision.

6. The therapist again requested twenty sessions for the four-month period beginning July 8, 2007. The Department approved fifteen visits consistent with its prior rationale, and the petitioner did not appeal this decision.

7. For the period beginning November 8, 2007, twenty sessions were requested and thirteen were approved, based on the same reason. Again, no appeal was taken.

8. The same request for twenty sessions was made for the four-month period beginning March 8, 2008, and eleven were granted, again for the same reasons. The petitioner appealed this decision on April 14, 2008 asking for a "restoration" of eighteen visits (one per week) for the four-month period.

9. At a hearing held on June 9, 2008 the petitioner submitted two letters, one dated April 18, 2008 from a doctor in Boston, and another from J.R.'s therapist, dated May 7, 2008. The first letter, from the Boston doctor provided:

I have followed [J.R.] (DOB 2/21/2009) in the Developmental Medicine Center at Children's Hospital, Boston since August, 2005. [J.] has a history of Autism and Global Developmental Delay for which she requires intensive services. Specifically, [J.] has an ongoing history of delays in her fine and gross motor skills and play skills, and demonstrates many sensory challenges.

[J.] is also very delayed regarding adaptive and self care skills. Due to these challenges, [J.] requires intensive intervention. [J.] is currently receiving occupational therapy services from Anne Mele, OTR in order to address these concerns. She currently receives these services on a weekly basis, and due to [J.'s] significant impairments these services should not be reduced. Rather, I request that services continue at the current frequency of 18 times per 4 month period (once per week) rather than being reduced to 11 times per 4 month period. [J.'s] impairments necessitate home services on an at least weekly basis.

10. The therapist's letter provided:

[J.R.] has been followed by me for Occupational Therapy services one time per week. Our concentration has been on working on her fine and gross motor skills and ability to motor plan for new tasks which would enable her to participate in play activities in the home. At this time, it is difficult for [J.] to engage in independent play but we are seeing improvement in some of her skills. [J.] also exhibits significant self stimulatory movements and difficulty in self regulation which can strongly impact her sleeping, eating and toileting skills. While they are also working on these in school, many autistic children have difficulty generalizing skills from one environment to another and we have noted that [J.] requires consistency in all environments. When I have not been able to see her, either because of illness or vacation, [J.] exhibits regression in her skills. As a result, I strongly recommend that she receive Occupational Therapy one time per week in her home to increase independence, decrease self stimulation and self injurious behaviors, and improve her activities of daily living. The current Medicaid approval of 11 times in 4 months does not meet her current needs.

11. From the above letters it did not appear that the Boston doctor was even aware that J.R.'s professional OT had already begun tapering down for more than a year. It was

also clear that J.R.'s therapist had not addressed the issue of professional vs. family OT sessions. The petitioner assured the Board and the Department that she would promptly provide additional medical information pertinent to the Department's rationale, and the matter was continued to allow the petitioner to submit additional evidence.

12. In July 2008 a paralegal with Vermont Legal Aid entered an appearance for the petitioner. At status conferences held in August and September 2008 the matter was again continued to allow the petitioner's representative additional time to submit medical evidence addressing the basis of the Department's reduction in approved services.

13. In October 2008 the petitioner's legal counsel withdrew her representation. The matter was again continued to allow the petitioner to try to find another advocate.

14. At a status conference held on December 5, 2008 the petitioner advised the hearing officer and the Department that she did could not find another advocate, but that she would have J.R.'s doctors and therapist contact OVHA directly to provide the agency with additional information about J.R.'s need for continuing professional OT services at an unreduced level. The hearing officer set a deadline of

January 1, 2009 for the submission of any further evidence or professional advocacy in J.R.'s behalf.

15. At a duly-noticed telephone status conference held on January 9, 2009 the petitioner could not be reached. To date, neither the petitioner nor anyone acting in her or J.R.'s behalf has provided the Department or the Board with any medical information since the April and May 2008 letters cited above.

16. The Department has provided the petitioner, her legal advocate, and the Board with an authoritative, thorough, and detailed medical rationale of its policies regarding the gradual tapering off of professional OT services for autistic children. The Department's position that maximum long-term benefit and continuity is achieved by gradually having family and school-based services replace professional OT services has not been addressed, much less controverted, by the OT therapist or by any of J.R.'s doctors. Thus, the Board has no factual basis to question the medical validity and applicability of the Department's decision in this case.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid regulations and procedures allow for an initial four months of coverage for prescribed OT. For coverage beyond four months (up to one year), "prior approval is required". W.A.M. § 4003.1, Procedures Manual § 4005(b)(3)(g). The regulations governing prior approval specifically require, inter alia, that the requested service be "medically necessary", "the least expensive, appropriate health service available", and "not experimental or investigational". W.A.M. § M106.4. In addition, the regulations defining "medical necessity" include the following provision: "Medically necessary care must be consistent with generally accepted practice parameters as recognized by health care providers in the same or similar general specialty as typically treat or manage the diagnosis or condition. . .". W.A.M. § M107. The Board has expressly upheld the above protocols in OT cases generally (see Fair Hearing No. 20,172), and in cases involving children who are eligible for special education.<sup>1</sup> Fair Hearing No. 19,102.

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<sup>1</sup>The petitioner has been repeatedly advised that she has additional legal remedies and rights under laws and regulations pertaining to special education.

In this case the petitioner, despite having been allowed nearly a year in which to do so, has not submitted any medical evidence or opinion challenging, much less refuting, the medical basis of the Department's decision in this matter. Therefore, the Department's decision must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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